

UNITED STATES DISTRICT COURT
IN THE NORTHERN DISTRICT OF OHIO

BARTECA HOLDINGS LLC d/b/a
BARTACO,
22 Elizabeth St.,
Norwalk, CT 06854,

Plaintiff,

v.

COASTAL TACO LLC,
c/o SMDK Agency, Inc.
3333 Richmond Road, Suite 370
Beachwood, Ohio 44122,

Case No. 1:16-cv-01498

Judge Christopher A. Boyko

AMENDED VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Barteca Holdings LLC (“Barteca”), by and through its attorneys, for its amended verified complaint against defendant Coastal Taco LLC (“Coastal Taco”), states as follows:

NATURE OF THE ACTION

This case arises from Coastal Taco’s wholesale and deliberate misappropriation of the distinctive “upscale coastal” look and feel of plaintiff’s Bartaco restaurant chain. Coastal Taco’s infringement of Bartaco’s trade dress constitutes an egregious violation of both the Lanham Act and Ohio statutory and common law. Barteca brings this action to enjoin Coastal Taco’s unlawful conduct and to recover its damages.

Plaintiff Barteca Holdings LLC operates ten Bartaco restaurants in six states, and plans to roll out new locations nationwide—including in Ohio—in the coming months and years. Barteca has invested millions of dollars in developing the Bartaco look and feel, which is inspired by a healthy, outdoor lifestyle and which combines fresh, upscale street food with a coastal vibe in a

relaxed environment. That “upscale coastal” design informs every aspect of Bartaco’s décor and customer experience.

Defendant’s principal owner, Alton F. “Rick” Doody III, learned about Bartaco’s success and became deeply familiar with the Bartaco look and feel in his role as an investor in Barteca. In that capacity (and through his relationship with another investor) Doody met several times with Barteca executives and visited several Bartaco locations. As an investor, Doody is also privy to Barteca’s confidential financial and business information about Bartaco.

Thus, familiar with the Bartaco brand identity and its financial success, Doody created Coastal Taco for the specific purpose of exploiting Bartaco’s intellectual property. Coastal Taco opened on May 27, 2016, in the Flats neighborhood in Cleveland. Within hours, social media users began to note the striking similarity between Coastal Taco and Bartaco. Indeed, the third reader comment on a Clevescene.com article announcing Coastal Taco’s opening noted: “THis [*sic*] place is an exact copy of a successful group based in Connecticut called Bartaco. It is either a ridiculous coincidence or Coastal Taco has absolutely no creativity. It’s so similar it’s comical.”

This was true. Indeed, painting on the blank canvas of a vacant building, Coastal Taco chose to use Bartaco’s look and feel in every particular, rather than create a trade dress of its own. Coastal Taco uses the exact same blue-and-white colorblock paint scheme as Bartaco, with blue paint up to hip-height and white paint above, executed on clapboard-style barn-board and concrete. Like Bartaco, Coastal Taco has exposed metal duct-work and structural elements, juxtaposed against rustic, woven basket-style overhead light fixtures and wood-bladed ceiling fans. Coastal Taco copies Bartaco’s decorative use of pergola-style non-structural beams made of unpainted, dark-colored wood. Coastal Taco, like Bartaco, has asymmetrically hung, wood-

framed photographs featuring beachfront and outdoor-living subjects on its interior walls. In its seating areas, Coastal Taco, like Bartaco, uses hip-height rock-lined planters as dividers between tables and sections. Coastal Taco, copying Bartaco, uses indoor high-top tables with black metal T-shaped legs and blonde-wood single-piece tabletops, large stone-set fireplaces, and garage-door-style indoor-outdoor seating spaces. Coastal Taco mimics Bartaco's decorative use of stacked, metal-wire crates containing brightly-colored fruits and vegetables. The two chains serve essentially identical food choices, set forth on identical menus, to be ordered through the use of an identical order-card system, which themselves are housed and displayed in identical "sauce caddies." Outside, Coastal Taco's patio design mimics Bartaco's, with virtually identical patio tables (slatted-top, white-painted), patio umbrellas (blue, with brown supports), patio heaters (with distinctive rectangular metal lattice-work and vertical cylindrical glass-enclosed heating element), and patio bar alcoves (food-truck-style, with horizontally-hinged swing-up windows and chain supports).

Coastal Taco's wholesale copying of Bartaco's distinctive look and feel infringes Bartaco's trade dress under the Lanham Act and a violates Ohio unfair competition and deceptive trade practices laws. This conduct threatens to confuse the public and to destroy the value of Barteca's investment in its Bartaco brand. Plaintiff seeks judgment enjoining Coastal Taco from operating its location in the Flats or opening any new locations unless and until it desists from using each and every feature copied from Bartaco and awarding damages.

THE PARTIES

1. Plaintiff Barteca Holdings LLC is a Connecticut limited liability company with its principal place of business in Norwalk, Connecticut. Barteca operates thirteen restaurants under the Barcelona brand and ten restaurants under the Bartaco brand.

2. Defendant Coastal Taco LLC is an Ohio limited liability company with its principal place of business in Cleveland, Ohio. On information and belief, Coastal Taco LLC owns and operates the Coastal Taco restaurant, which it opened in Cleveland in May 2016, and which it intends to expand to additional locations.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1338.

4. This Court has personal jurisdiction over the defendant because defendant is domiciled in the State of Ohio and operates the infringing restaurant in the City of Cleveland.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the defendant resides in this district under the statutory definitions.

FACTUAL BACKGROUND

Creation of the Bartaco Look and Feel

6. In approximately 2010, Barteca creative director Sasa Mahr-Batuz created the basic design concept that eventually took shape in the Bartaco look and feel, inspired by a combination of design sophistication and a relaxed, beach-front vibe exemplified by certain fashion retailers in South America. Mahr-Batuz and his colleagues forged this concept into the idea of an “upscale coastal” restaurant experience based on a healthy, outdoor lifestyle and a beach-front experience, with influences from the destination coastal cities of Punta del Este (in Uruguay), Buzios (in Brazil), and Mykonos (in Greece), as well as Southern California and Mexico.

7. The Barteca team proceeded to create the specific elements by which this upscale-coastal design would manifest in the actual look and feel of a restaurant. Only after settling on

the upscale coastal look and feel did Barteca decide to pair that look and feel with a healthy-living, taco-oriented menu, with culinary influences from Mexican as well as Asian and South American cuisines.

8. Barteca employs a substantial in-house design, marketing, and branding team. In addition to creative director Mahr-Batuz and the combined creative efforts of the entire Barteca leadership team, the company employs a head of graphic design, a director of social media, and even a carpentry shop to fabricate the custom furniture and furnishings that make the Bartaco look and feel distinctive.

9. Creating the Bartaco look and feel took thousands of hours of work over more than six months. Moreover, Barteca has invested many tens of millions of dollars in the brand since the first Bartaco restaurant opened in 2011.

Bartaco's Blue-and-White Colorblock Wall Design

10. One essential design element implementing Bartaco's upscale coastal design is a two-tone, blue-and-white "colorblock" scheme for interior and exterior walls, with a blue wainscoting-type block of color up to approximately hip-height and white above. Every Bartaco location implements this design, and each one executes the paint scheme on both concrete and reclaimed barn board hung horizontally in a clapboard style, to emphasize the beachfront minimalism of the overall look and feel.

11. This photograph illustrates the blue-and-white colorblock design on the exterior (above) and interior (below) of Bartaco's Port Chester, NY location, executed on unfinished concrete:



12. The blue-and-white colorblock design (hung indoors with large wood-framed photos) features prominently at each of Bartaco's other locations, as shown here:



Stamford, CT



West Hartford, CT



Westport, CT



Atlanta, GA (West Midtown)



Atlanta, GA (Chastain Park)



Reston, VA



Tampa, FL



Atlanta, GA (Inman Park)



Nashville, TN

13. Indeed, Bartaco press coverage repeatedly has noted the blue-and-white paint scheme. A review of the original Port Chester, NY location noted that the “breezy space is designed in shades of blue and white, with old painted clapboard walls and high-ceilinged rooms punctuated by basket-weave lights hanging from ropes, ceiling fans and fig trees.” Of the location in Atlanta’s Inman Park, Zagat’s wrote that Bartaco “eschew[s] bright colors and bath[es] its interior surroundings in soothing blues, whites and blond wood.” A Tampa Bay, FL review lauded Bartaco’s “crisp, clean interior of blue and white.”

14. Guests clearly associate the blue-and-white colorblock scheme with their Bartaco experience, as evidenced by its ubiquity in user-generated social media content:





Fixtures and Furnishings

15. The upscale-coastal look and feel also finds expression in Bartaco’s distinctive fixtures and furnishings.

16. For example, Bartaco consistently uses basket-style lighting fixtures, which it fabricates in-house. Indeed, it obtained a license from Underwriters’ Laboratories specifically for this purpose. The rustic, woven fixtures stand out against exposed plumbing, duct-work, and other white-painted mechanicals of the restaurants’ high ceilings.

17. Another striking feature of Bartaco’s look and feel is its use of non-structural interior wood beams in a “pergola” style, which also juxtapose a rustic, coastal vibe against Bartaco’s industrial ceilings and exposed mechanicals. Both the basket-style lamps and the pergola beams can be seen here:



18. In the spirit of healthy living and creative minimalism, Bartaco uses “fruit crates” as a decorative element. These wire crates, stacked in highly visible locations, provide an organic, multi-color point of visual interest against the backdrop of the overall blue-and-white color scheme (while also storing extra produce), as shown here:



19. Indoor signage is hand painted in white text outlined in black on unfinished boards:



20. Blue-and-white interior walls are hung with large photographs taken by Bartaco's own staff and featuring themes consistent with the upscale coastal design: surfing, beach activities, and generally active, outdoor living. These photographs are hung in a deliberately asymmetrical layout, designed using architectural drawing software.

21. Outdoor and indoor dining spaces are deliberately blended at Bartaco, not only through the consistent use of the colorblock design but also through the use of large, garage-door style openings that casually link indoor with outdoor space.

22. Thus, Bartaco patios not only implement the blue-and-white colorblock paint design, they also extend it with white-painted tables featuring blue seat-cushions. Patio umbrellas with blue canopies and wooden supports implement the look and feel as well.

23. Bartaco uses (and, where necessary, builds) furniture to exemplify the beach-front simplicity of the upscale coastal design. For example, outdoor tables are painted white with slatted tops, similar to beach-front picnic tables. Indoor tables feature single-piece tabletops of blond wood and black metal bases and are set with white wicker chairs.

24. Bartaco's look and feel extends the overall design concept even to the smallest details. Round, unfinished "taco tokens" good for a free taco on a return visit are provided as an loyalty incentive program. Even the "check presenter" on which the guest's check is delivered at the end of the meal supports the overall coastal theme, executed as it is in unpainted wood with an embossed Bartaco logo (a stylized dragonfly). Bartaco business cards are square rather than rectangular, in blue and white with the dragonfly logo on one side. Comment cards, take-out menus, and other printed materials are similarly consistent in color scheme and overall design.

Order-Card-Based Taco Service and Menu

25. The primary feature of the Bartaco customer experience, apart from the visual and physical design of the restaurants, is a deliberately laid-back food-ordering system based on "order cards."

26. In Bartaco's order card system, waiters do not set the pace for food orders. Instead, guests indicate their desired taco orders on a grid-style order card using miniature golf pencils provided at each table. Guests then insert completed order cards in a metal spindle built into Bartaco's custom-made wooden sauce caddies. Once wait-staff observe a completed order card visible in a metal spindle, they collect the orders and convey them to the kitchen. (A separate card bearing the Bartaco dragonfly logo is also provided to display if a diner has a question or wishes to place a drink order.)

27. Barteca created each element of the order card system to cohere with the upscale coastal design. The order card itself is practical, unpretentious, and user-friendly, allowing guests to select their meal at leisure. Five columns in the order grid allow each diner to specify her or his desired items:



28. And, to complete the order card experience, Bartaco provides a custom-built wooden sauce caddy on each table, complete with holes drilled to hold golf pencils and a metal spindle to display completed order cards for wait-staff to pick up:



29. Bartaco's order card system is as much a part of its look and feel as its Mykonos-inspired blue-and-white color scheme. Food writers regularly describe the system in their reviews, and social media users delight in sharing photographs of their completed order cards.

30. For example, a Connecticut-based reviewer traveled to the Port Chester, NY location and explained the system to her readers as follows: "Mark off what you want on the menu card, put it up on the metal arm, or if you have a question or need help, put up the dragonfly logo of Bartaco. Cool concept!" The same reviewer, describing the Stamford, CT location, noted the consistency of the system across locations and its connection to the overall "vibe." "We got our seats," she wrote, "and saw they had the same kind of vibe going on in here, even with the little metal stands to place your menu orders on."

31. Numerous social media post show customers' association between Bartaco and the order card system. These posts (one of them shown in the form re-transmitted, or "re-grammed" by Bartaco's own social media marketing staff) are typical:



32. Once the cards are picked up and the orders are ready, Bartaco waitstaff delivers food to the table on deep-rimmed aluminum trays lined with brown paper. Glassware is etched with Bartaco's trademarked dragonfly logo. Hot sauces, provided at each table and available for retail sale, are distinctively labeled in blue-and-white.

33. For those who do not choose to sit, Bartaco offers both outdoor and indoor take-out windows, in keeping with the upscale food-truck style of cuisine on offer. Take-out tacos are also available in assemble-yourself form as "party packs," with taco filling in paper "Chinese food" boxes and tortillas wrapped separately, to ensure a high-quality eating experience at home—since, otherwise, taco-filling tends to soak through the tortilla on the ride home.

Menu Selections

34. Finally—and critically—Bartaco's menu reflects the restaurant's overall, international, healthy-lifestyle look and feel.

35. At center stage, of course, are the tacos: available in an unusual range of flavors, from the traditional chicken and pork to fried oyster, portobello, and even falafel. They may be ordered individually or in "chef's selection" trays.

36. Dairy-intensive items common at Mexican-themed restaurants (such as cheese dip and sour cream) are generally not offered. Instead, as non-taco alternatives, Bartaco offers rice bowls with a variety of proteins and a whole rotisserie chicken.

37. Instead of a typical "happy hour," Bartaco offers "five for five" on weekdays—meaning five specially-designed cocktails for five dollars each.

After its Launch in Port Chester, NY, Bartaco Expands Rapidly

38. The first Bartaco location opened in Port Chester, NY, in 2010. It was an immediate success not only with the originally-anticipated youth demographic, but also with families who enjoyed its upscale but casual atmosphere and healthy menu choices.

39. Barteca then quickly turned its attention to expanding the Bartaco brand into new locations and geographic regions.

40. In 2011, Bartaco opened a second location in Stamford, Connecticut.

41. To sustain and accelerate further expansion, Barteca also sought growth capital from outside investors.

Rosser Capital Partners Invests in Barteca and Introduces Doody to the Bartaco Brand

42. Rosser Capital Partners (“RCP”) is a specialized private equity firm with a particular focus on investing in restaurants.

43. Barteca sought RCP as an investor partner both to secure funds for more expansion and to benefit from the experience and expertise of RCP Managing Partner Harold O. Rosser.

44. Prior to investing in Barteca, RCP and Rosser previously had invested in a different restaurant group founded by Coastal Taco principal Rick Doody.

45. In 2011, RCP invited Doody to participate in RCP’s evaluation of the opportunity to invest in Bartaco.

46. Both in that role and in his subsequent role as a passive investor in Barteca, Doody received abundant information about the development of Bartaco’s upscale coastal design—including detailed confidential information concerning Barteca’s finances and business plans. This access began in 2011 and continues to the present.

Further Expansion after RCP Investment

47. After the RCP investment, Barteca steadily launched new Bartaco locations.
48. In 2012 and 2013, respectively, Barteca opened new Bartaco locations in West Hartford and Westport, Connecticut.
49. Barteca opened Bartaco's first Atlanta location in 2014.
50. Five additional locations opened in 2015: two more in Atlanta and one each in Nashville, TN, Tampa, FL, and Reston, VA.
51. Still seeking faster expansion, Barteca obtained additional growth capital investment in late 2015 from private equity firm General Atlantic.
52. Following that investment, and with both RCP and General Atlantic supporting its efforts, Barteca is on the verge of opening three more new locations in 2016, and five more to come in each of 2017 and 2018.
53. Ultimately, Barteca anticipates making Bartaco a significant nationwide presence, with locations in each major population center.
54. To that end, Barteca is actively working with commercial real estate brokers and developers in many markets across the United States to identify potential sites and negotiate leases for Bartaco locations.
55. Barteca's expansion plans for Bartaco include Ohio. Indeed, Barteca scouted a site in Cleveland earlier this year and is working with a major commercial broker to identify other potential sites in Ohio.

Doody Tells Scott He Plans a Taco Restaurant Entirely Different from Bartaco

56. Doody is in occasional contact with Barteca's leadership team, in part because of their mutual relationship with RCP (and because Doody remains an indirect investor in Barteca).

57. In March 2016, Doody indicated to Barteca that he intended to start a taco restaurant in Cleveland, but assured Barteca that this new restaurant would not resemble Bartaco in any meaningful way (apart from selling tacos, of course).

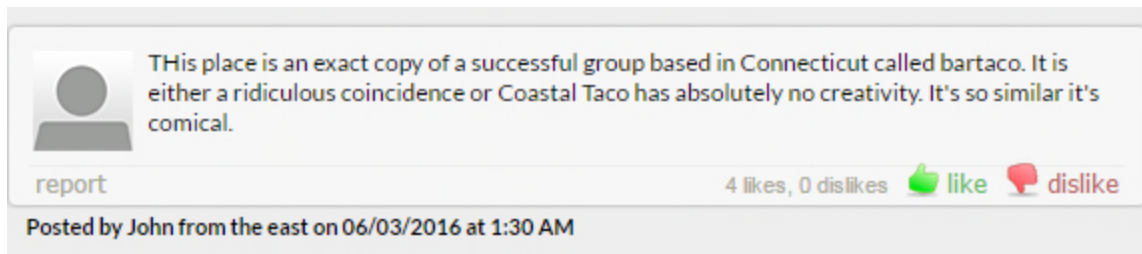
58. That assurance was false.

Doody Opens Coastal Taco, Copying Virtually Every Aspect of Bartaco's Look and Feel

59. On May 27, 2016, Doody and defendant Coastal Taco LLC opened Coastal Taco in the East Bank of the Flats, at 1146 Old River Road, Cleveland, OH.

60. Barteca first became aware of Coastal Taco when a member of Bartaco's social media team discovered an Instagram post with a photograph of Coastal Taco's patio labeled with a Bartaco hashtag. The post read: "Surf's up, Cleveland. #BarTaco #Kinda."

61. Other Internet commentary was to the same effect. For example, an early commenter on a clevescene.com article about Coastal Taco read as follows:



62. Indeed, and notwithstanding the limitless alternative aesthetic options open to it, Coastal Taco in fact copies virtually every meaningful aspect of Bartaco's carefully designed look and feel—from the Mykonos-inspired blue-and-white colorblock paint scheme and the order card-based service to the smallest details of menu graphic design.

Coastal Taco Appropriates Bartaco's Distinctive Upscale Coastal Design

63. Coastal Taco's overall look and feel is all but identical to Bartaco's, and that total effect is the inevitable result of copying every essential component of the Bartaco design.

64. To begin with, Coastal Taco copies Bartaco's color scheme. Here are side-by-side interior photographs, with Bartaco on the left and Coastal Taco on the right, showing the use of identical color choices on identical clapboard-style barn-board, both hung with large-format, wood-framed photographs with beachfront, active-lifestyle themes:



65. Coastal Taco also uses Bartaco's blue-and-white color scheme outdoors (again, and throughout this section, Bartaco is shown to the left and Coastal Taco to the right):

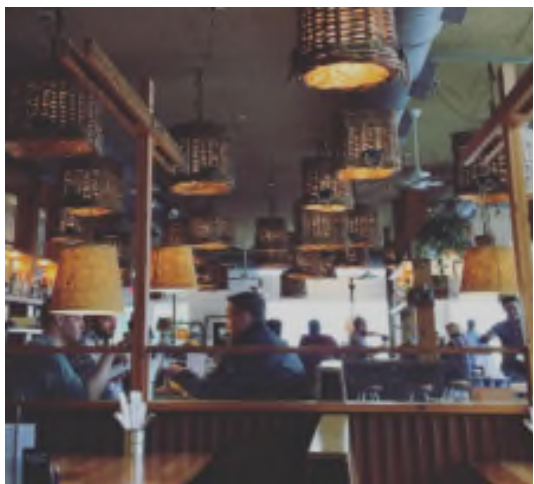


66. Blatant misappropriation of Bartaco's color scheme is only the beginning. Coastal Taco mimics every other significant feature of the Bartaco look and feel as well.

67. For example, Coastal Taco copies Bartaco's use of woven, basket-style lighting fixtures:



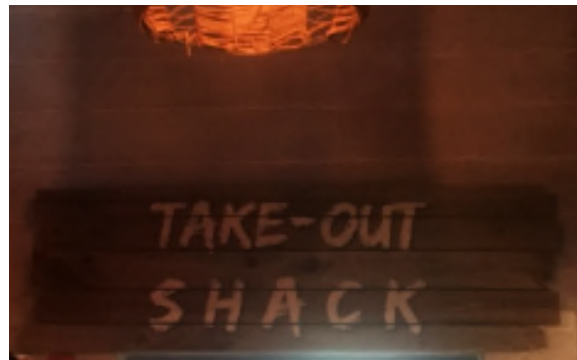
68. The rustic basket-style lighting fixtures are especially distinctive in juxtaposition against the exposed, white-painted mechanical steel and duct-work on the ceiling, which Coastal Taco has also copied. A similar juxtaposition—also appropriated by Coastal Taco—is achieved by use of non-structural, unpainted wood “pergola-style” overhead beams against the same un-enclosed ceiling, as shown here:



69. Coastal Taco also copies Bartaco’s decorative “fruit crates.” These features both display and contain brightly-colored citrus fruits and other staples, and exemplify the artful industrial chic of the upscale coastal look and feel:



70. Interior signage is another area of duplication. At its inside take-out window, for example, Coastal Taco has duplicated not only Bartaco's hand-lettered white text with black-bordering but also appearance of a distressed-wood background:



71. Coastal Taco also uses indoor furniture that duplicates Bartaco's, such as these solid blond-wood-topped tables with black metal bases:



72. Similarly, Coastal Taco, like Bartaco, has chosen to emphasize a large stone fireplace, set with a large horizontal wooden beam.



73. As a point of visual interest, and also to emphasize the fact that juices for cocktails are made fresh for each order, Bartaco chose to install its sturdy, counter-mount Ra Chand brand juicers right on its large, open bar. Coastal Taco did exactly the same—even down to the brand of its juicers:



74. Coastal Taco's duplication of Bartaco's look and feel is just as blatant outside as it is inside. Bartaco's carpenters fabricate its white-painted, slatted-top, picnic-style outdoor tables in-house. Coastal Taco has sourced nearly identical tables.



75. Zooming out, one can readily see the contribution of these nearly-identical tables to Coastal Taco's duplication of the Bartaco look and feel. This is especially so in light of Coastal Taco's use—like Bartaco—of patio umbrellas with dark-blue canopies and wooden posts, in a clear extension of their duplication of Bartaco's color scheme:



76. Much of the Bartaco look and feel is inspired by the cuisine and spirit of the beachfront food-truck. Nowhere is that more visible than in Bartaco's exterior food-truck style take-out window: horizontally hinged, chain-suspended, and classic. Coastal Taco duplicates the approach exactly:



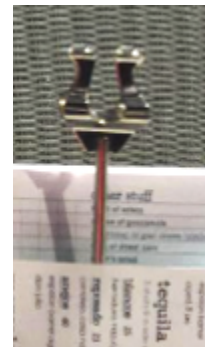
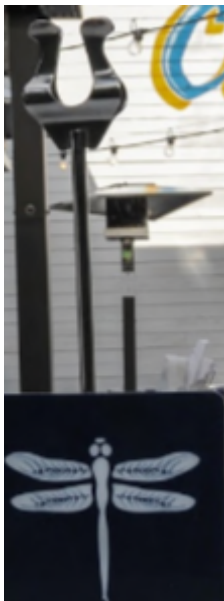
77. While many restaurant patios use outdoor propane heaters, Coastal Taco clearly chose to duplicate Bartaco's choice of heaters with vertically-oriented, glass-enclosed heating elements and rectangular metal lattice-work:



78. Coastal Taco also uses every design element of Bartaco's order card service system, from the layout of the order cards to the metal spindles to the sauce caddies drilled to hold them and the golf pencils used to fill them out:



79. Even the style of metal spindle used to hold the order card is exactly the same:



80. Coastal Taco's order card itself is an exact knock-off of Bartaco's. Both contain an order grid with five columns. Both use all-lowercase blue type on a white background. Bartaco's order card (listing "tacos" on one side and "not tacos" on the other) is shown here:



81. Coastal Taco's order card is essentially identical, substituting "other stuff" for "not tacos" on the reverse side of the card, as shown below:

ITEM	PRICE	ITEM	PRICE
			
tacos!			
	\$2.5 each		
pork al pastor	pineapple salsa		
chicken tinga	lime crema		
mahi mahi	house spiced, corn & black bean salsa		
citrus swordfish	le spice rubbed, salsa verde		
bbq carnitas	apricot BBQ, sweet spanish onion		
portabella	chipotle / balsamic marinade		
baja blue cod	jalapeno slaw		
\$3.5 each			
angry ahi tuna	pepino & cucumber slaw		
grilled steak	avocado crema, onion		
crispy shrimp	house spiced, pepino / cucumber slaw		
braised short rib	guajillo sauce		
fried oyster	guajillo sauce, jalapeno slaw		
papi's big boards 24 cm - 35 lg			
chef's choice of tacos and tamales, served with house chips and salsa			
bols			
white or brown rice & black beans	6		
pulled chicken tinga			
portabella			
bbq carnitas			
mahi mahi			
grilled steak (add \$2)			
crispy shrimp (add \$2)			
other stuff			
flight of salsas	6		
choice of guacamole			
traditional or goat cheese (circle one)	6		
stick of street corn	4		
cesar's salad	4		
chopped taco salad	4		
chicken tamale	5		
veggie tamale	5		
cubano black bean soup	3		
chicken and rice soup	3		
coastal shareables			
served with rice, beans, guac and house chips			
whole roasted chicken	17		
tamale's loco	14		
street sides 2 each			
black beans			
brown rice			
white rice			
house chips			
pico de gallo			
salsa of choice (circle one below)			
verde, pineapple or roasted tomato			
desserts			
mango sorbet	5		
churros	6.5		
fried ice cream	5		

82. Coastal Taco's table set-up and food delivery also duplicate Bartaco's down to the last detail. Coastal Taco, for example, duplicates Bartaco's placement of silverware in a metal can rather than providing individual place-settings.



83. Bartaco chose to etch its custom-selected glassware with its dragonfly logo. Coastal Taco, not missing a detail, etched its own tumblers with its hammock symbol.



84. And, when the food itself is ready, Coastal Taco—exactly like Bartaco—delivers it to the table in deep-lipped aluminum trays lined with brown paper.



85. So precisely does Coastal Taco mimic Bartaco's food presentation, in fact, that Coastal Taco used a Bartaco promotional photograph in an advertisement of its own seeking to hire waitstaff. Part of Coastal Taco's flyer is shown below to the left. The original Bartaco photograph from which the image in the lower left corner of the flyer was taken is below right. While this does, of course, constitute blatant infringement of Bartaco's copyright in the photograph, it much more importantly shows that Coastal Taco's style and food presentation is so similar to Bartaco's that even Coastal Taco's own staff cannot reliably distinguish them:



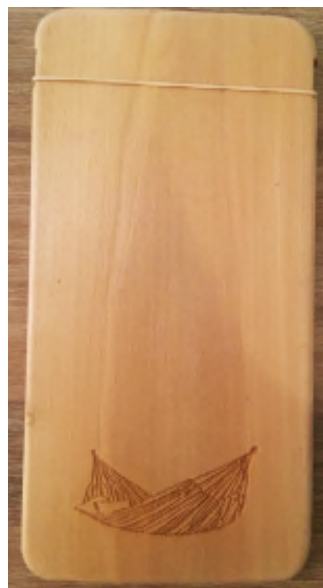
86. The food itself is strikingly similar—and not just because both Bartaco and Coastal Taco serve tacos. The range of taco offerings at both restaurants includes unusual choices such as fried oyster tacos and portobello tacos, for example. And, the non-taco options including rotisserie chicken and “rice bowls” are strikingly similar.

87. No detail, apparently, was too small for Coastal Taco to copy.

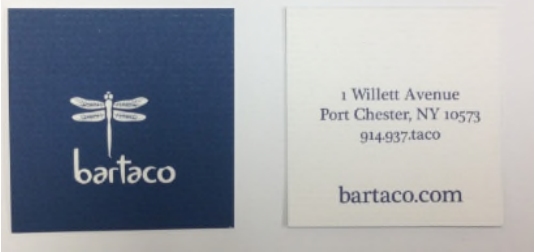
88. As a promotion, Bartaco staff provide departing guests with “taco tokens” good for a free taco on a later visit. The tokens are on round, unfinished wood and stamped with the Bartaco dragonfly logo on one side and “1 taco” on the other. As shown by these photos, Coastal Taco has copied this promotion exactly:



89. Coastal Taco also duplicated the blond-wood, logo-embossed “check presenter” used to deliver the guest check at the end of the visit:



90. Bartaco business cards are cut square rather than rectangular, with white text and logo on a blue background and the address on the reverse side in blue text on a white background. Coastal Taco copies this exactly:



91. But for the name and logo, Coastal Taco’s guest comment card is exactly the same as Bartaco’s, word-for-word, line for line, and check-box for check-box.

A white guest comment card for Bartaco. It features the Bartaco logo (a dragonfly) and the text "tell us what you think". Below this, it says "Please fill out and hand to the manager for a complimentary taco". The card includes fields for "Email", "Name", "Facebook", and "Town/City". It also has a rating section with columns for "Excellent", "Good", "Average", and "Poor", and rows for "Food Quality", "Drink Quality", "Service", "Ambience", "Value", and "Overall Experience". At the bottom, there is a "Comments (please!)" section and social media links for Facebook and Twitter.A white guest comment card for Coastal Taco. It features the Coastal Taco logo (a dragonfly) and the text "TELL US WHAT YOU THINK". Below this, it says "PLEASE FILL OUT AND HAND TO THE MANAGER FOR A COMPLIMENTARY TACO". The card includes fields for "e-mail", "name", "facebook", and "town/city". It also has a rating section with columns for "excellent", "good", "average", and "poor", and rows for "food quality", "drink quality", "service", "ambience", "value", and "overall experience". At the bottom, there is a "comments" section and social media links for Facebook and Twitter.

92. Bartaco invites its guests to purchase its hot sauces to take home. As depicted below left, Bartaco labels its hot sauce bottles in white-on-blue, with stylized line-drawings. Not missing a detail, Coastal Taco also offers its sauces for sale, and also labels them in white on blue:



93. Coastal Taco even copied Bartaco's "five for five" cocktail special as an alternative to the more typical "happy hour."

94. Both Bartaco and Coastal Taco market their brands through social media. To that end, Bartaco invites its guests to post about their experiences using the hashtag "#Bartacolife." Coastal Taco's hashtag? "#coastaltacolife"

FIRST CAUSE OF ACTION
Trade Dress Infringement under Section 43(a) of the Lanham Act
(15 U.S.C. § 1125(a)(1)(A))

95. Plaintiff repeats and realleges the allegations contained above as if fully set forth herein.

96. Every Bartaco restaurant uses the same distinctive trade dress, inspired by a healthy, outdoor lifestyle and combining fresh, upscale street food with a coastal vibe in a relaxed environment.

97. Bartaco's trade dress features a number of specific visual design elements, including but not limited to: (1) a blue-and-white colorblock paint scheme executed most prominently on clapboard-style wooden boards and unfinished concrete; (2) basket-style

overhead lighting fixtures; (3) non-structural interior wood pergola-style beams; (3) wire crates displaying fruit and other produce; (4) industrial-style Ra Chand brand juicers installed on the bar; (5) interior signage hand-painted in white text outlined in black on a surface presenting the appearance of unfinished boards; (6) asymmetrically-displayed photography featuring beach scenes, surfing, and outdoor living; (7) garage-door-style openings between interior and exterior dining areas; (8) outdoor tables painted white with slatted tops and indoor tables of single-piece blond wood and black metal bases with white wicker chairs; (9) round “taco tokens” of unfinished wood to offer free tacos to customers upon a return visit; (10) a “check presenter” of unfinished wood embossed with the Bartaco logo; (11) printed materials using the blue-and-white color scheme and featuring distinct design features such as a square business card with the Bartaco logo in white on a blue field; (12) food served on rimmed trays, and drinks served in glassware etched with the Bartaco logo; (13) distinctively-shaped hot sauce bottles featuring the blue-and-white color scheme and stylized line drawings; (14) grid-style “order cards” on which customers write their orders and submit them to waitstaff by inserting them into a spindle on wood sauce caddies on each table; (15) a menu that features certain specific non-traditional traditional taco fillings such as fried oyster and Portobello in addition to traditional fillings such as chicken and pork; and (16) a food-truck style walk-up take-out window.

98. Bartaco’s trade dress is primarily non-functional.

99. The visual design elements of Bartaco’s trade dress, as an ensemble, form a total presentation to consumers that is arbitrary and inherently distinctive, and thus protectable under federal trademark law.

100. Bartaco’s trade dress is also protectable under federal trademark law because it has acquired secondary meaning.

101. Bartaco has utilized the same trade dress in its restaurants since the inception of its first restaurant. The trade dress utilized in each Bartaco restaurant is identical, and Bartaco even manufactures particular elements of its trade dress in-house to maintain consistency among its restaurants.

102. Bartaco utilizes the same trade dress in all of its advertising and marketing.

103. Bartaco's use of its trade dress is exclusive. None of Bartaco's competitors in the casual, upscale dining market (with the exception of Coastal Taco) uses trade dress similar to the Bartaco's, and Bartaco's trade dress thus signals to customers that they are in a Bartaco restaurant.

104. Coastal Taco mimics Bartaco's trade dress in virtually every detail, including by using: (1) a blue-and-white colorblock paint scheme executed on clapboard-style wooden boards and unfinished concrete; (2) basket-style overhead lighting fixtures; (3) non-structural interior wood pergola-style beams; (3) wire crates displaying fruit and other produce; (4) industrial-style Ra Chand brand juicers installed on the bar; (5) interior signage hand-painted in white text outlined in black on a surface presenting the appearance of unfinished boards; (6) asymmetrically-displayed photography featuring beach scenes, surfing, and outdoor living; (7) garage-door-style openings between interior and exterior dining areas; (8) outdoor tables painted white with slatted tops and indoor tables of single-piece blond wood and black metal bases with white chairs; (9) round "taco tokens" of unfinished wood to offer free tacos to customers upon a return visit; (10) a "check presenter" of unfinished wood embossed with the Coastal Taco logo; (11) printed materials using the blue-and-white color scheme and featuring distinct design features such as a square business card with the Coastal Taco logo in white on a blue field; (12) food served on rimmed trays, and drinks served in glassware etched with the Coastal Taco logo;

(13) distinctively-shaped hot sauce bottles featuring the blue-and-white color scheme and stylized line-drawings; (14) grid-style “order cards” on which customers write their orders and submit them to waitstaff by inserting them into a spindle on wood sauce caddies on each table; (15) a menu that features certain specific non-traditional traditional taco fillings such as fried oyster and portobello in addition to traditional fillings such as chicken and pork; and (16) a food-truck style walk-up take-out window.

105. Because of the similarity between the Coastal Taco’s trade dress and Bartaco’s trade dress, customers are likely to be confused as to the respective origin of the Coastal Taco and the Bartaco restaurants.

106. Through its use in commerce of trade dress mimicking Bartaco’s trade dress, Coastal Taco is knowingly and intentionally misrepresenting and falsely designating to the general public the affiliation, connection, or association of Coastal Taco with Bartaco, or the origin, sponsorship, or approval of Coastal Taco by Bartaco.

107. Coastal Taco’s use in commerce of trade dress mimicking Bartaco’s trade dress is likely to cause confusion of or mistake by the general public, or to deceive the general public as to the affiliation, connection, or association of Coastal Taco with Bartaco, or the origin, sponsorship, or approval of Coastal Taco by Bartaco.

108. As a direct and proximate result of Coastal Taco’s aforesaid acts, Bartaco has been damaged and has suffered and will continue to suffer immediate and irreparable injury for which it has no adequate remedy at law.

109. In utilizing trade dress that is confusingly similar to Bartaco’s trade dress, Coastal Taco has acted intentionally, willfully, and deliberately.

SECOND CAUSE OF ACTION

**Deceptive Practices under the Ohio Deceptive Trade Practices Act
(O.R.C. § 4165.01 *et seq.*)**

110. Bartaco repeats and realleges the allegations above as if fully set forth herein.

111. Coastal Taco's use of trade dress that is confusingly similar to Bartaco's trade dress (as described herein) constitutes deceptive practices under O.R.C. § 4165.02 in that Coastal Taco has caused a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of Coastal Taco, or caused a likelihood of confusion or misunderstanding as to its affiliation, connection, association with, or certification by Bartaco.

112. In doing so, Coastal Taco has acted intentionally, willfully, and deliberately.

113. As a direct and proximate result of Coastal Taco's aforesaid acts, Bartaco has been damaged and has suffered and will continue to suffer immediate and irreparable injury for which it has no adequate remedy at law.

THIRD CAUSE OF ACTION

Trade Dress Infringement under Ohio Common Law

114. Bartaco repeats and realleges the allegations above as if fully set forth herein.

115. Coastal Taco's use of trade dress that is confusingly similar to Bartaco's trade dress (as described herein) constitutes trade dress infringement under the common law of the state of Ohio.

116. In doing so, Coastal Taco has acted intentionally, willfully, and deliberately.

117. As a direct and proximate result of Coastal Taco's aforesaid acts, Bartaco has been damaged and has suffered and will continue to suffer immediate and irreparable injury for which it has no adequate remedy at law.

FOURTH CAUSE OF ACTION
Unfair Competition under Ohio Common Law

118. Bartaco repeats and realleges the allegations above as if fully set forth herein.

119. Coastal Taco's use of trade dress that is confusingly similar to Bartaco's trade dress (as described herein) constitutes unfair competition under the common law of the state of Ohio in that Coastal Taco has misappropriated and unfairly competed with Bartaco's commercial business and will continue to do so.

120. In doing so, Coastal Taco has acted intentionally, willfully, and deliberately.

121. As a direct and proximate result of Coastal Taco's aforesaid acts, Bartaco has been damaged and has suffered and will continue to suffer immediate and irreparable injury for which it has no adequate remedy at law.

JURY TRIAL DEMAND

Plaintiff hereby requests a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Barteca respectfully requests judgment against Coastal Taco LLC as follows:

- A. For a preliminary and permanent injunction prohibiting Coastal Taco LLC from operating Coastal Taco unless and until Coastal Taco LLC ceases to use any feature of Bartaco's trade dress;
- B. For disgorgement of all pre- and post-filing profits obtained by Coastal Taco LLC through the operation of the infringing restaurant;
- C. Awarding Barteca its attorneys' fees in this matter;
- D. For prejudgment and post-judgment interest; and
- E. For such other relief as the Court deems just and proper.

Dated: June 30, 2016

Respectfully submitted,

/s/: Richard S. Gurbst

Richard S. Gurbst (OH # 0017672)
Admitted to the Northern District of Ohio
richard.gurbst@squirepb.com
Eleanor M. Hagan (OH # 0091852)
Admitted to the Northern District of Ohio
eleanor.m.hagan@squirepb.com
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, OH 44114
Telephone: (216) 479-8500
Fax: (216) 479-8070

Gregory A. Clarick (NY # 2445203)*
gclarick@cgr-law.com
Isaac B. Zaur (NY # 4615431)*
izaur@cgr-law.com
Melissa C. Holsinger (NY # 4295606)*
mholsinger@cgr-law.com
*Appearing pro hac vice
CLARICK GUERON REISBAUM LLP
220 Fifth Avenue, 14th floor
New York, NY 10001
Telephone: (212) 633-4310
Fax: (646) 478-9484

Attorneys for Plaintiff Barteca Holdings LLC

CERTIFICATE OF SERVICE

I certify that the foregoing Plaintiff's Amended Verified Complaint has been filed this 30th day of June, 2016, and served upon the Defendant by hand delivery to Defendant's counsel in accordance with the stipulation and also served by the Court's ECF system to Defendant's counsel.

/s/: Richard S. Gurbst

Attorney for Barteca Holdings LLC